

asserted that the application contains inventions drawn to patentably distinct species and required the Applicant, under 35 U.S.C. §121, to elect a specific fusion protein comprising a specific combination of autoantigens, a specific linker, a specific affinity binding pair member for the linker, and a specific label. The Examiner has further pointed out that all claims are generic.

In response, Applicant elects with traverse the fusion protein according to claim 3, the linker KKRRPRKKK (SEQ ID NO: 2), the affinity binding pair biotin-streptavidin, and a fluorescent label.

Applicant respectfully requests that the Examiner reconsider and withdraw the Election of Species Requirement. Applicant directs the Examiner's attention to M.P.E.P. §809.02(d), which states,

"Where only generic claims are presented, no restriction can be required except in those applications where the generic claims recite such a multiplicity of species that an unduly extensive and burdensome search is necessary."

Applicants maintain that given the limited number of species recited in the generic claims, no such multiplicity exists, and therefore no "unduly extensive and burdensome search" would be necessary if election were not required. Applicant further points out that a similar Election of Species requirement was issued by a previous Examiner in this case in an Office Action mailed May 11, 1999, but was subsequently withdrawn in an Office Action mailed October 11, 2000 upon further review.

Application No. 09/015,399
September 3, 2002
Page 3

In view of the foregoing, Applicant respectfully requests that the Examiner reconsider and withdraw the Election of Species requirement set forth in the July 2, 2002 Office Action.

Respectfully submitted,

By 
Patrick T. Skacel
Attorney for Applicants
Registration No. 47,948
ROTHWELL, FIGG, ERNST & MANBECK, P.C.
1425 K Street, N.W.
Suite 800
Washington, D.C. 20005
Telephone: (202) 783-6040

Dated: September 3, 2002